

House Bill 172

By: Representatives Willard of the 49th, Knox of the 24th, Jacobs of the 80th, and Coan of the 101st

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 10-5-2 of the Official Code of Georgia Annotated, relating to definitions and rules of construction of the "Georgia Securities Act of 1973," so as to provide for changes to the terms "securities" and "viatical investment" for purposes of clarification and to conform to federal standards; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 10-5-2 of the Official Code of Georgia Annotated, relating to definitions and rules of construction of the "Georgia Securities Act of 1973," is amended by revising paragraph (26) of subsection (a) as follows:

"(26) 'Security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of indebtedness, investment certificate, certificate of interest or participation in any profit-sharing agreement, certificate of interest in oil, gas, or other mineral rights, collateral trust certificates, preorganization certificate or subscription, transferable share, investment contract, viatical investment, voting-trust certificate, limited partnership interest, or beneficial interest in profits or earnings, or any other instrument commonly known as a security, including any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase, any of the foregoing. The term 'investment contract' shall include but is not limited to an investment which holds out the possibility of return on risk capital even though the investor's efforts are necessary to receive such return if:

(A) Such return is dependent upon essential managerial or sales efforts of the issuer or its affiliates;

(B) One of the inducements to invest is the promise of promotional or sales efforts of the issuer or its affiliates in the investor's behalf; and

(C) The investor shall thereby acquire the right to earn a commission or other compensation from sales of rights to sell goods, services, or other investment contracts of the issuer or its affiliates.

Security shall not mean: (i) any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period nor any variable annuity contract as provided for and regulated under Title 33 and issued by a life insurance company licensed to do business in the State of Georgia; (ii) ~~nor shall it mean~~ any interest in a residential unit and a rental management arrangement relating to such residential unit so long as the owner-participants under the rental management arrangement, whether optional or mandatory, do not participate directly in the income derived from the rental of units owned by others; or (iii) those investments that would be considered viatical investments but for the exclusions provided in subparagraphs (a)(32)(A) through (a)(32)(D) of this Code section."

SECTION 2.

Said Code section is further amended by revising paragraph (32) of subsection (a) as follows:

"(32) 'Viatical investment' means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life insurance policy or certificate. Viatical investment does not include:

(A) Any sale or transfer of any portion of the death benefit or ownership of a life insurance policy or certificate: (i) by the insured or policy owner to a viatical issuer or to any person or entity regularly engaged in the business of reselling or transferring such benefits to viatical issuers; (ii) that is a federal covered security under Section 18(b)(3) or (4) of the federal Securities Act of 1933; or (iii) that is deemed to be an offshore transaction occurring outside the United States pursuant to Regulation S promulgated under the federal Securities Act of 1933;

(B) The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other institution licensed under the laws of any state or the United States as collateral for a loan;

(C) The obtaining of accelerated benefits from the issuer pursuant to the terms of a life insurance policy issued in accordance with the laws of this or another state; or

(D) The sale or transfer of any portion of the death benefit or ownership of a life insurance policy by an individual who enters into no more than one agreement in a calendar year regarding the transfer of life insurance policies insuring the life of only one person for consideration that is less than the death benefit, unless any third party

1 receives, directly or indirectly, any fee, commission, or other remuneration in
2 connection with said assignment."

3 **SECTION 3.**

4 All laws and parts of laws in conflict with this Act are repealed.